

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MUTUAL OF ENUMCLAW  
INSURANCE COMPANY as  
Subrogee for MALCOLM  
KEITHLEY and MARCIA  
KEITHLEY, husband and wife, and  
MALCOLM KEITHLEY and  
MARCIA KEITHLEY, husband and  
wife as their marital community,

Plaintiffs,

v.

SUNBEAM PRODUCTS, INC., a  
foreign corporation doing business in  
Douglas County, Washington,

Defendant.

No. CV-06-00185-FVS

STIPULATED PROTECTIVE  
ORDER REGARDING  
CONFIDENTIAL INFORMATION

The parties having stipulated to the entrance of a protective order,

**IT IS HEREBY ORDERED:**

1. Any and all documents produced or to be produced by any party to this action pursuant to any Request for Production of Documents or Request for Admission, served by any other party, or testimony by way of deposition, Interrogatory, or at trial for which the producing or testifying party asserts a claim of proprietary, confidential, trade secret or otherwise sensitive commercial information shall be subject to this Protective Order. The documents and testimony are referred to as "Protected Documents" and "Protected Testimony" as hereinafter defined and are to be maintained in a confidential manner under the procedures as hereinafter set forth:

STIPULATED PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
INFORMATION– 1

1           2.     The term “Protected Document” as used herein shall mean any  
2 document produced during discovery or at the trial of this action which is of a  
3 trade secret, proprietary, confidential, or of a commercially sensitive nature and  
4 is designated at the time of production by the producing party to be a  
5 “Protected Document.” A “Protected Document” shall continue to be a  
6 “Protected Document” until such time as the producing party agrees in writing  
7 that the document is no longer considered to be a “Protected Document.” This  
8 paragraph includes references to “protected documents” in the remainder of  
9 this Order.  
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11           3.     The term “Protected Testimony” as used herein shall mean any  
12 testimony given by way of deposition, interrogatory or at trial of this action  
13 which is of a proprietary, confidential, trade secret, or of a commercially  
14 sensitive nature and is designated at the time the testimony is given and  
15 designed by the testifying party to be “Protected Testimony.” “Protected  
16 Testimony” shall continue to be “Protected Testimony” until such time as the  
17 testifying party agrees in writing that the testimony is no longer considered to  
18 be “Protected Testimony.” This paragraph includes references to “protected  
19 testimony” in the remainder of this Order.  
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21           4.     All designations of Protected Documents or Protected Testimony  
22 shall be made on a good faith basis with sufficient foundation under the  
23 Federal Rules of Civil Procedure. By making a confidential designation, the  
24 designating party and its counsel shall be deemed to certify that a good faith  
25 basis exists for the designation, and the information sought to be protected  
26 constitutes a “trade secret or other confidential research, development, or  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 2

1 commercial information” that: (1) has not been disclosed to third parties  
2 outside the company without confidential, privileged, or protective  
3 arrangements; (2) has never been produced, disclosed or used in any litigation  
4 without a protective order and a stamp designating such protection; and (3) is  
5 not known to be part of a public judicial record by introduction as an exhibit at  
6 a trial or hearing or by being filed in an unsealed state in a court action and not  
7 thereafter sealed by any Court from subsequent disclosure. However,  
8 notwithstanding the above, a confidential designation shall create no  
9 presumption or inference concerning its propriety and, if challenged, Sunbeam  
10 retains the burden of proof to establish good cause and entitlement to  
11 protection.  
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22 5. The documents designated and produced as “Protected  
23 Documents” and testimony designated as “Protected Testimony” shall be given  
24 confidential treatment as described below.  
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28 6. Without further order of this Court, requesting or receiving parties  
29 may show “Protected Documents” and “Protected Testimony,” and may  
30 disclose the contents thereof, only to the following persons (hereinafter  
31 referred to as “Qualified Persons”):  
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37 a. Parties and their counsel of record in this  
38 action for requesting or receiving party;  
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40 b. Regular employees of such counsel assigned to  
41 and necessary to assist such counsel in the  
42 preparation of trial of this action;  
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44 c. Bona fide independent (i.e., not employed by  
45 or affiliated with a party or an affiliated company of a  
46 party) trial experts whom counsel, in good faith,  
47 reasonably anticipates will testify at trial as experts

STIPULATION AND AGREED  
PROTECTIVE ORDER – 3

1 and only to the extent necessary for preparation or  
 2 testifying by that expert, subject to all of the terms  
 3 and conditions of this order, provided that the names  
 4 and employment affiliations of the experts are  
 5 provided to all opposing counsel at least ten days in  
 6 advance of such disclosure, so that opposing counsel  
 7 may have an opportunity to file an objection with the  
 8 Court prior to such disclosure, in which case such  
 9 disclosure shall not occur pending resolution by the  
 10 Court;

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 12 d. Bona fide consultants whom counsel, in good  
 13 faith, reasonably anticipate will not testify at trial as  
 14 experts but are retained by counsel to aid in  
 15 preparation for discovery and/or trial;

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 17 e. Provided that no disclosure shall be made to  
 18 any person currently employed by any competitor of  
 19 the party producing the "Protected Document" or  
 20 giving "Protected Testimony" except upon further  
 21 order of this Court; provided further that, if such  
 22 person to whom any "Protected Testimony" or  
 23 "Protected Documents" have been produced becomes  
 24 an employee of a competitor, such person shall  
 25 immediately notify counsel for Plaintiff (who shall in  
 26 turn immediately notify counsel for Defendant) and  
 27 all such "Protected Documents" and "Protected  
 28 Testimony" produced to such person shall be  
 29 immediately returned to counsel for Plaintiff; and

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 31 f. The Court, under appropriate seal.

32 7. Every "Protected Document" copied for production (including  
 33 excerpts, digests, summaries or indices thereof) shall be clearly marked  
 34 substantially as follows:  
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 38 CONFIDENTIAL  
 39 Produced pursuant to Protective Order  
 40 Mutual of Enumclaw Insurance Company and Malcolm Keithley and Marcia  
 41 Keithley v. Sunbeam Products, Inc.  
 42 U.S.D.C., E.D. Wash. Case No. CV-06-00185-FVS  
 43 DO NOT COPY  
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45 and shall remain at all times under the custody of counsel for the party or  
 46 parties obtaining such documents, or their retained experts only.  
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STIPULATION AND AGREED  
 PROTECTIVE ORDER – 4

1           8.     “Protected Testimony” shall be noted in the record at the  
2 beginning and the conclusion of “Protected Testimony” and shall remain at all  
3 times under the custody of counsel for the party or parties obtaining such  
4 testimony, or their retained experts only.  
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8           9.     Any Party may challenge the propriety of a designation of  
9 Protected Document or Protected Testimony by objecting in writing within  
10 Thirty (30) days after the document, material, and/or information has been  
11 produced or designated. The designating party must respond in writing to the  
12 challenge within thirty (30) days. Before seeking judicial relief, the parties  
13 shall attempt to resolve the dispute in good faith and on an informal basis. If  
14 the dispute as to the designation is not resolved, the party challenging the  
15 designation must seek judicial resolution within thirty (30) days after the  
16 designating party has responded to the written objection, as set forth above.  
17 The failure to timely seek such judicial resolution shall be deemed a waiver of  
18 the challenge to the confidentiality designation. In response to any challenge,  
19 the designating party shall have the burden of proof to establish good cause for  
20 inclusion of material within this Protective Order. The designation as  
21 Protected Document or Protected Testimony continues pending a judicial  
22 determination. This procedure for challenging confidentiality designations  
23 shall likewise apply to any disputed documents from other cases sought to be  
24 used in this case, but claimed to be covered by a protective order in such other  
25 case.  
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28           10.    “Protected Documents,” the material contained therein and  
29 “Protected Testimony” shall not be used or shown, disseminated, copied or in  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 5

1 any way communicated to anyone for any purpose whatsoever other than  
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3 “Qualified Persons,” as defined above. Except as provided in paragraph 4  
4 above, requesting or receiving parties shall keep all “Protected Documents,”  
5 the material contained therein and “Protected Testimony” confidential from all  
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7 persons.  
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11 11. Before being given access to any “Protected Document” or  
12 “Protected Testimony,” each “Qualified Person” to whom a requesting or  
13 receiving party or his representatives intend to deliver, exhibit or disclose any  
14 “Protected Document,” material contained thereon or “Protected Testimony,”  
15 such “Qualified Person” shall be advised of the terms of this Order, shall be  
16 given a copy of this Order, and shall agree, in writing, to be bound by its terms  
17 by execution of the form attached hereto as Exhibit “A.” Counsel for the  
18 requesting or receiving party shall maintain a list of all “Qualified Persons” to  
19 whom any “Protected Document,” material contained therein or “Protected  
20 Testimony” is provided, specifying the “Protected Document,” material or  
21 “Protected Testimony” provided to the “Qualified Person” and that list shall be  
22 available for inspection by the Court and by the producing party at any time.  
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26 12. Counsel for a requesting or receiving party shall keep records of  
27 all copies of each “Protected Document” or “Protected Testimony” made  
28 and/or distributed, in whole or in part, or any excerpts thereof to “Qualified  
29 Persons.” Any copies so distributed shall be returned to the respective counsel  
30 of the requesting or receiving party immediately upon the completion of the  
31 “Qualified Person’s” retention in this case.  
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35 13. To the extent that any “Protected Document,” or information  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 6

1 obtained therefrom, is used in the taking of depositions, all such "Protected  
2 Documents" and information shall remain subject to the provisions of this  
3 Order, along with the transcript pages of the deposition testimony dealing with  
4 the "Protected Documents," "Protected Testimony," or information.  
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8 a. If a "Protected Document" is used in any deposition, the  
9 reporter shall be informed of this Order and shall be required to label as  
10 "Confidential" those portions of the transcript so designated by counsel.  
11 Counsel shall notify the court reporter when deposition testimony should  
12 be marked as "Confidential" **at the time the testimony is elicited.**  
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15 b. Any "Protected Documents" marked as exhibits shall be kept in  
16 a separate sealed envelope, with the envelope marked to reflect that the  
17 contents are subject to the Protective Order.  
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20 c. In the event the deposition is videotaped, the original and all  
21 copies of the videotape shall be marked by the video technician to  
22 indicate that the contents of the videotape are subject to this Protective  
23 Order in substantially the same form as follows below:  
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25 This videotape contains confidential testimony used  
26 in this case and is not to be viewed or the contents  
27 thereof displayed, or revealed except by order of the  
28 Court, or pursuant to written stipulation of the  
29 parties.  
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31 14. All documents that are filed with the Court that contain any  
32 portion of any "Protected Documents" or information taken from any  
33 "Protected Documents" (in summary form or otherwise) shall be filed under  
34 seal. Any confidential information filed under seal pursuant to this order  
35 shall state "Sealed Pursuant to Protective Order" in the heading  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 7



1 15. No requesting or receiving party, or "Qualified Person," who  
2 receives copies of any "Protected Documents" or "Protected Testimony" or any  
3 part, portion or excerpt thereof produced in accordance with this Protective  
4 Order, is authorized to disseminate or distribute in any manner, all or any part  
5 of "Protected Documents" or "Protected Testimony" to any other person, firm,  
6 corporation or organization, without the prior written consent of the producing  
7 or testifying party or upon further order of this Court.  
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10 16. That all documents, information, or other data produced by a  
11 party, which are the subject of this Protective Order, shall be used for no  
12 purpose other than to prepare for trial regarding the issues of this litigation.  
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15 17. Within twenty (20) days from and subsequent to the conclusion of  
16 this litigation, including any appeals, either (a) by compromise settlement, (b)  
17 by stipulated dismissal, (c) by entry of judgment, or (d) by conclusion of any  
18 appeals, whichever shall occur first, copies of all "Protected Documents,"  
19 "Protected Testimony" or other materials subject to this Protective Order shall  
20 be retrieved by the party who sought their production and shall be returned to  
21 counsel for the producing or testifying party, including all copies of all  
22 "Protected Documents," "Protected Testimony" excerpts, digests, summaries,  
23 indices or testimony relating thereto, in whatever form, including copies  
24 provided to experts, or any person, firm, corporation or organization obtaining  
25 the document as a "Qualified Person."  
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42 18. No requesting or receiving party, their counsel or experts, shall  
43 under any circumstances sell, offer for sale, advertise, or otherwise publicize  
44 either the contents of "Protected Documents" or "Protected Testimony," or the  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 8



1 fact that the requesting or receiving party has obtained confidential and/or  
2 privileged documents from the producing or testifying party.  
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4 19. Neither the identity nor the contents of the documents produced  
5 herein may be used in connection with any other lawsuit or for any purpose  
6 whatsoever other than the preparation and trial of this action unless obtained  
7 from some other source or contained in public record.  
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9 20. This Order shall be binding upon the parties hereto, upon their  
10 attorneys, and upon the parties and their attorneys, successors, executors,  
11 personal representatives, administrators, heirs, legal representatives, assigns,  
12 subsidiaries, divisions, employees, agents, retained experts, and the persons or  
13 organizations over which they have control.  
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15 21. The production, publication, dissemination or other use of the  
16 documents identified and designated as confidential and provided hereunder to  
17 counsel for the parties or by any other person to whom the documents are  
18 disseminated or disclosed by counsel for the parties for use in any manner,  
19 unrelated to the needs of this particular case is expressly prohibited and it is  
20 expressly understood and agreed that any such person who violates the terms  
21 and conditions of this Protective Order consents to the jurisdiction of this Court  
22 and may be subject to sanctions under Washington law in the event of  
23 unauthorized use. This paragraph is not applicable to any document produced  
24 herein which is a matter of public record, which was received from another  
25 source, or which has been admitted into evidence at trial.  
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27 22. After termination of this litigation, including any appeals, the  
28 provisions of this Order shall continue to be binding, except with respect to  
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STIPULATION AND AGREED  
PROTECTIVE ORDER – 9

1 those documents and information that become a matter of public record. This  
2 Court retains and shall have jurisdiction over the parties and recipients of the  
3 “Protected Documents” or “Protected Testimony” for enforcement of the  
4 provisions of this Protective Order following termination of the litigation.  
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8 23. Neither the production of the documents, nor the inspection  
9 thereof, nor any testimony, in deposition or otherwise, pertaining to such  
10 documents shall constitute a waiver of the right of the parties to claim in this  
11 action or otherwise that said documents, or any portion thereof, are privileged  
12 or otherwise non-discoverable or are not admissible in evidence in this action  
13 or in any other proceeding.  
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20 It is so ordered.  
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22 Dated this 17th day of August, 2007.  
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27 s/ Fred Van Sickle  
28 Fred Van Sickle  
29 United States District Judge  
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